

EXHIBIT 1

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

SEARS, ROEBUCK AND CO., a New York corporation; and
DOES 1 to 100, inclusiveFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 28 2007

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court
111 North Hill Street
111 North Hill Street
Los Angeles, California 90012
Central District

CASE NUMBER:
(Número del Caso):

BC 383006

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kevin T. Barnes (SB# 138477) (323) 549-9100 (323) 549-0101

Law Offices of Kevin T. Barnes

5670 Wilshire Boulevard, Suite 1460

Los Angeles, CA 90036

DATE:

DEC 28 2007

JOHN A. CLARKE, CLERK

Clerk by

(Secretario)

M. GARCIA

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): SEARS, ROEBUCK & CO.

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- 4.
- ☐
- by personal delivery on (date):

EXHIBIT 2

Kevin T. Barnes, Esq. (#138477)
 Gregg Lander, Esq. (#194018)
 LAW OFFICES OF KEVIN T. BARNES
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, CA 90036-5627
 Tel.: (323) 549-9100 / Fax: (323) 549-0101
 Email: Barnes@kbarnes.com

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 Los Angeles Superior Court

DEC 28 2007

Joseph Antonelli, Esq. (#137039)
 Janelle Carney, Esq. (#201570)
 LAW OFFICE OF JOSEPH ANTONELLI
 1000 Lakes Drive, Suite 450
 West Covina, CA 91790-2918
 Tel.: (626) 917-6228 / Fax: (626) 917-7686
 Email: JAntonelli@antonellilaw.com

John A. Clarke, Executive Officer/Clerk
 BY MARY GARCIA, Deputy

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED

JOSE JIMENEZ, on behalf of himself and all
 others similarly situated,

Case No.:

BC383006

Plaintiffs,

CLASS ACTION

v.

COMPLAINT FOR:

SEARS, ROEBUCK AND CO., a New
 York corporation; and DOES 1 to 100,
 inclusive,

1. UNLAWFUL, UNFAIR AND
FRAUDULENT BUSINESS
PRACTICES; AND
2. DECLARATORY RELIEF

Defendants.

DEMAND FOR JURY TRIAL

Plaintiff JOSE JIMENEZ, an individual on behalf of himself and all others similarly
 situated (hereinafter collectively referred to as "Plaintiffs"), hereby file this Complaint against
 Defendant SEARS, ROEBUCK AND CO. and DOES 1 to 100 (hereinafter collectively referred
 to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and
 belief, allege as follows:

I.

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of California
Business and Professions Code ("B&PC") §17000, et seq. and §17200, et seq. and related
 common law principles.

KEVIN T. BARNES
 5670 WILSHIRE
 BLVD. SUITE 1460
 LOS ANGELES, CA
 90036-5614
 TEL.: (323) 549-9100
 FAX: (323) 549-0101

1 2. Plaintiffs' action seeks full restitution from Defendants as a result of Defendants'
2 unlawful, fraudulent and/or unfair business practices.

3 3. The acts complained of herein occurred, occur and will occur, at least in part,
4 within the time period from four (4) years preceding the filing of the original Complaint herein,
5 up to and through the time of trial for this matter.

6 RELEVANT JOB TITLES

7 4. The relevant job titles in this action are Defendants' California-based "Assistant
8 Manager" positions in Defendant's Automotive Center Division, including any of Defendants'
9 job positions with substantially similar titles and duties in that division (hereinafter, the
10 "Assistant Manager" positions).

11 5. Defendants' Assistant Manager positions are paid by Defendants on a salaried
12 basis.

13 6. The obligations and responsibilities of Defendants' Assistant Manager positions
14 are virtually identical from region to region, district to district, facility to facility, and employee
15 to employee. Any differences in job activities between the different individuals in these positions
16 were and are legally insignificant to the issues presented by this action.

17 SUMMARY OF CLAIMS

18 7. With regard to the Assistant Managers, Defendants have:

- 19 a. Failed to pay state-mandated overtime wages for all overtime hours worked;
- 20 b. Failed to provide meal periods;
- 21 c. Failed to provide paid rest periods;
- 22 d. Failed to timely furnish accurate itemized wage statements;
- 23 e. Violated Labor Code §203; and
- 24 f. Conducted unlawful, unfair and/or fraudulent business practices.

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II.

PARTIES

PLAINTIFF JOSE JIMENEZ

8. Plaintiff JOSE JIMENEZ is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

9. Plaintiff JOSE JIMENEZ is working and/or has worked for Defendants as a California-based Assistant Manager from November 2000 to May 16, 2003 in Torrance, California and from March 2004 to April 9, 2004 in West Covina, California.

10. Plaintiff JOSE JIMENEZ seeks recovery from Defendants because with regard to Plaintiff JOSE JIMENEZ, Defendants have:

- a. Failed to pay state-mandated overtime wages for all overtime hours worked;
- b. Failed to provide meal periods;
- c. Failed to provide paid rest periods;
- d. Failed to timely furnish accurate itemized wage statements;
- e. Violated Labor Code §203; and
- f. Conducted unlawful, unfair and/or fraudulent business practices.

DEFENDANT, SEARS, ROEBUCK AND CO.

11. Defendant SEARS, ROEBUCK AND CO. is now and/or at all times mentioned in this Complaint was a New York corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

DOES 1 TO 100, INCLUSIVE

12. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in the State of California.

13. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

14. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

16. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

18. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

19. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

20. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

21. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.**JURISDICTION AND VENUE**

22. The California Superior Court has jurisdiction in this matter due to Defendants' violations of B&PC §17000, et seq. and §17200, et seq. and related common law principles.

1 29. The 17200 Class is made up of the following subclasses:

- 2 a. All California-based Assistant Managers (as defined, supra) employed by
- 3 Defendants during the appropriate time period whom Defendants classified as
- 4 salaried exempt and therefore failed to pay overtime wages for all overtime
- 5 hours worked (hereinafter, the "Overtime Subclass");
- 6 b. All California-based Assistant Managers (as defined, supra) employed by
- 7 Defendants during the appropriate time period whom Defendants classified as
- 8 salaried exempt and therefore failed to provide the legally requisite meal
- 9 periods (hereinafter, the "Meal Period Subclass");
- 10 c. All California-based Assistant Managers (as defined, supra) employed by
- 11 Defendants during the appropriate time period whom Defendants classified as
- 12 salaried exempt and therefore failed to provide the legally requisite rest
- 13 periods (hereinafter, the "Rest Period Subclass");
- 14 d. All California-based Assistant Managers (as defined, supra) employed by
- 15 Defendants during the appropriate time period whom Defendants classified as
- 16 salaried exempt and therefore failed to provide accurate itemized wage
- 17 statements (hereinafter, the "Wage Statement Subclass"); and
- 18 e. All California based Assistant Managers (as defined, supra) formerly
- 19 employed by Defendants during the appropriate time period to whom
- 20 Defendants willfully failed to pay any and all wages (hereinafter, the "LC 203
- 21 Subclass").

22 30. The 17200 Class, Overtime Subclass, Meal Period Subclass, Rest Period

23 Subclass, Wage Statement Subclass and LC 203 Subclass are hereinafter collectively referred to

24 as the "Classes."

25 31. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or

26 necessary to amend the definition of the Classes. In any event, Plaintiffs will formally define and

27 designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

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1 32. Numerosity (CCP §382):

- 2 a. The potential quantity of members of the Classes as defined is so numerous
- 3 that joinder of all members would be unfeasible and impractical.
- 4 b. The disposition of the claims of the members of the Classes through this class
- 5 action will benefit both the parties and this Court.
- 6 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
- 7 however, it is estimated that each of the Classes numbers greater than 100
- 8 individuals.
- 9 d. The quantity and identity of such membership is readily ascertainable via
- 10 inspection of Defendants' records.

11 33. Superiority (CCP §382): The nature of this action and the nature of the laws

12 available to Plaintiffs make the use of the class action format particularly efficient and the

13 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- 14 a. California has a public policy which encourages the use of the class action
- 15 device;
- 16 b. By establishing a technique whereby the claims of many individuals can be
- 17 resolved at the same time, the class suit both eliminates the possibility of
- 18 repetitious litigation and provides small claimants with a method of obtaining
- 19 redress for claims which would otherwise be too small to warrant individual
- 20 litigation;
- 21 c. This case involves large corporate Defendant(s) and a large number of
- 22 individual Class members with many relatively small claims and common
- 23 issues of law and fact;
- 24 d. If each individual member of each of the Classes was required to file an
- 25 individual lawsuit, the large corporate Defendants would necessarily gain an
- 26 unconscionable advantage because Defendants would be able to exploit and
- 27 overwhelm the limited resources of each individual member of the Classes
- 28 with Defendants' vastly superior financial and legal resources;

- e. Requiring each individual member of each of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well-being;
- f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;
- g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:
 - i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;
 - ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;
 - iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants; and
 - iv) potentially incompatible standards of conduct for Defendants;
 - v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.
- h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;

- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

34. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff JOSE JIMENEZ are typical of the claims of all members of the Classes they seek to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- b. Adequacy: Plaintiff JOSE JIMENEZ:
 - i) is an adequate representative of the Classes he seeks to represent;
 - ii) will fairly protect the interests of the members of the Classes;
 - iii) has no interests antagonistic to the members of the Classes; and
 - iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
- c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:
 - i) Whether Defendants' conduct constitutes unlawful, unfair and/or fraudulent competition within the meaning of B&PC §17200, et seq.;

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- 1 ii) Whether Defendants' conduct constitutes unlawful, unfair and/or
- 2 fraudulent business practices within the meaning of B&PC §17200, et
- 3 seq.;
- 4 .iii) Whether the members of the Classes are entitled to restitution and if
- 5 so, the means of measuring such damages;
- 6 iv) Whether the members of the Classes are entitled to injunctive relief;
- 7 v) Whether Defendants are liable for attorneys' fees and costs.
- 8 vi) Whether the members of the Overtime Subclass regularly worked
- 9 overtime;
- 10 vii) Whether the members of the Overtime Subclass were paid regular
- 11 straight time pay, overtime pay and/or double time pay for all hours
- 12 worked in excess of eight (8) hours per day and/or forty (40) hours per
- 13 week;
- 14 viii) Whether each of the reasonably definite and finite work tasks
- 15 performed by the members of the Overtime Subclass should be
- 16 classified as exempt/managerial or nonexempt/nonmanagerial;
- 17 ix) Whether the members of the Overtime Subclass were uniformly and
- 18 improperly classified as exempt in violation of the Labor Code and the
- 19 IWC Wage Order(s);
- 20 x) Whether Defendants failed to pay overtime compensation to the
- 21 members of the Overtime Subclass by virtue of Defendants' uniform
- 22 and improper designation of employees as exempt in violation of the
- 23 Labor Code and the IWC Wage Order(s);
- 24 xi) Whether Defendants' purportedly exempt position(s) required
- 25 members of the Overtime Subclass to be actually primarily engaged in
- 26 non-exempt work;
- 27 xii) The correct method of calculating unpaid overtime pay;
- 28 ///

V.

(Against All Defendants)

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38. B&PC §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

39. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices as follows:

A.

FAILURE TO PAY OVERTIME WAGES

40. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

41. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

42. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

43. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

- a. Administered a uniform company policy and practice regarding the duties and responsibilities of the members of the Overtime Subclass;
- b. Administered a uniform company policy and practice regarding the payment of wages to the members of the Overtime Subclass;
- c. Scheduled to work and in fact required the members of the Overtime Subclass to work in excess of eight (8) hours per workday and/or in excess of forty (40) hours per workweek without paying straight time or overtime compensation for such excess hours worked;

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- d. Paid the members of the Overtime Subclass on a salary basis without straight time and/or overtime compensation paid for all work accomplished in excess of eight (8) hours per day and/or forty (40) hours per week;
- e. Deemed each of the members of the Overtime Subclass exempt based on his or her job description rather than on any consideration of actual work performed;
- f. Kept no records of the actual work activities performed by the members of the Overtime Subclass;
- g. Conducted no studies of how members of the Overtime Subclass spent their work time;
- h. Did not train the members of the Overtime Subclass on the difference between exempt and nonexempt work;
- i. Did not employ the members of the Overtime Subclass using: i) an alternative workweek schedule adopted pursuant to Labor Code §511 or ii) an alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Labor Code §514; or iii) an alternative workweek schedule which is inapplicable here pursuant to Labor Code §554;
- j. Allocated and authorized inadequate staffing levels, with the advance knowledge and designed intent to place non-exempt tasks and duties squarely onto the shoulders of each and every one of the members of the Overtime Subclass; and
- k. Required that Plaintiffs and the members of the Overtime Subclass spend more than fifty percent (50%) of their work time performing non-exempt tasks.

44. Further, the members of the Overtime Subclass:

- a. Did not perform duties and responsibilities which involved the management of Defendants' enterprise;

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- b. Did not customarily and regularly direct the work of two or more of Defendants' other employees;
- c. Did not have the authority to hire or fire other employees (and/or their suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of Defendants' other employees will be given particular weight);
- d. Did not customarily and regularly exercise discretion and independent judgment; and/or
- e. Were not primarily engaged in duties which meet the test of the Executive Exemption.

45. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a), to recovery by the members of the Overtime Subclass, in a civil action, for the unpaid balance of the full amount of the straight time compensation and overtime premiums owing, including interest thereon, reasonable attorneys' fees, and costs of suit.

46. Defendants' misclassification as exempt of the members of the Overtime Subclass was the rule, and therefore a class action is the most efficient means of resolving the Overtime Subclass Members' overtime claims. (see, e.g. Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319).

47. Each Overtime Subclass Member's claim to unpaid overtime depends on whether he or she worked for Defendants during the relevant time period in a position that was misclassified either deliberately (on a class basis) or circumstantially (as a consequence of Defendants' class-wide policies and practices; that calculation of individual damages may at some point be required does not foreclose the possibility of taking common evidence on the misclassification questions. (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept. v. Superior Court (1981) 30 Cal.3d 256).

48. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the members of the Overtime Subclass seek recovery of pre-judgment interest on all amounts recovered herein.

49. Pursuant to Labor Code §218.5 and Labor Code §1194, the members of the Overtime Subclass request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

B.

FAILURE TO PROVIDE MEAL PERIODS

50. Labor Code §226.7(a) provides that “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

51. Labor Code §512 provides that “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

52. Labor Code §512 further provides that “An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

53. Labor Code §516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to meal periods for any workers in California consistent with the health and welfare of those workers.

54. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when

1 by written agreement between the parties an on-the-job paid meal period is agreed to. The
 2 written agreement shall state that the employee may, in writing, revoke the agreement at any
 3 time.”

4 55. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
 5 provide an employee a meal period in accordance with the applicable provisions of this order, the
 6 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
 7 compensation for each workday that the meal period is not provided.”

8 56. The members of the Meal Period Subclass consistently worked over five (5) hours
 9 per shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to
 10 exceeding five (5) hours of employment.

11 57. The members of the Meal Period Subclass did not waive their meal periods, by
 12 mutual consent with Defendants or otherwise.

13 58. The members of the Meal Period Subclass did not enter into any written
 14 agreement with Defendants agreeing to an on-the-job paid meal period.

15 59. Defendants failed to comply with the meal period requirements established by
 16 Labor Code §226.7, Labor Code §512, Labor Code §516 and Section 11 of the IWC Wage
 17 Order(s).

18 60. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(b)
 19 which states “if an employer fails to provide an employee a meal or rest period in accordance
 20 with an applicable order of the industrial Welfare Commission, the employer shall pay the
 21 employee one additional hour of pay at the employee’s regular rate of compensation for each
 22 work day that the meal or rest period is not provided,” the members of the Meal Period Subclass
 23 are entitled to damages in an amount equal to one (1) additional hour of pay at each employee’s
 24 regular rate of compensation for each work day that the meal period was not provided.

25 61. Pursuant to Labor Code §218.6 and CC §3287, the members of the Meal Period
 26 Subclass seek recovery of pre-judgment interest on all amounts recovered herein.

27 62. Pursuant to Labor Code §218.5, the members of the Meal Period Subclass request
 28 that the Court award reasonable attorneys’ fees and costs incurred by them in this action.

C.

FAILURE TO PROVIDE PAID REST PERIODS

63. Labor Code §226.7(a) states: "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

64. Labor Code §516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods for any workers in California consistent with the health and welfare of those workers.

65. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

66. Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

67. The members of the Rest Period Subclass consistently worked over four (4) hours per shift and therefore were entitled to a rest period of not less than ten (10) minutes prior to exceeding four (4) hours of employment.

68. Defendants failed to authorize and permit the required rest periods established by Labor Code §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s).

69. Pursuant to Section 12(B) of the IWC Wage Order(s) and Labor Code §226.7(b) which states "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each

work day that the meal or rest period is not provided," the members of the Rest Period Subclass are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that the rest period was not provided.

70. Pursuant to Labor Code §218.6 and CC §3287, the members of the Rest Period Subclass seek recovery of pre-judgment interest on all amounts recovered herein.

71. Pursuant to Labor Code §218.5, the members of the Rest Period Subclass request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

D.

FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

72. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, to furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee....".

73. Further, the IWC Wage Orders §7(A) states in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay...."

74. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by the members of the Wage Statement Subclass, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

75. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each of the members of the Wage Statement Subclass with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

76. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by the members of the Wage Statement Subclass, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

77. Plaintiffs and the members of the Wage Statement Subclass have suffered injury as a result of Defendants' failure to maintain accurate records for the members of the Wage Statement Subclass in that the members of the Wage Statement Subclass were not timely provided written accurate itemized statements showing all requisite information, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Orders §7(A), such that the members of the Wage Statement Subclass were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

78. Pursuant to Labor Code §226(e), the members of the Wage Statement Subclass are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

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1 88. Therefore, Defendants have engaged in unlawful, unfair and fraudulent business
2 acts or practices prohibited by B&PC §17200, including those set forth in the preceding and
3 foregoing paragraphs of this Complaint, thereby depriving Plaintiffs and all others similarly
4 situated of the minimum working standards and conditions due to them under California labor
5 laws and the IWC Wage Order(s), as specifically described herein.

6 89. Defendants have engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in the preceding paragraphs,
8 specifically, by requiring employees to perform the labor services complained of herein without
9 the requisite compensation.

10 90. Defendants' use of such practices constitutes an unfair business practice, unfair
11 competition and provides an unfair advantage over Defendants' competitors.

12 91. Plaintiffs have suffered injury in fact and have lost money or property as a result
13 of such unfair competition.

14 92. Plaintiffs, on behalf of themselves and all others similarly situated, seek full
15 restitution from Defendants, as necessary and according to proof, to restore any and all monies
16 withheld, acquired and/or converted by Defendants by means of the unfair practices complained
17 of herein.

18 93. Further, if Defendants are not enjoined from the conduct set forth above,
19 Defendants will continue to practice, employ and utilize the employment practices outlined in the
20 preceding paragraphs.

21 94. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
22 injunction prohibiting Defendants from engaging in the foregoing conduct.

23 95. Plaintiffs, on behalf of themselves and all others similarly situated, seek the
24 appointment of a receiver, as necessary, to establish the total monetary relief sought from
25 Defendants.

26 ///

27 ///

28 ///

1 SECOND CAUSE OF ACTION

2 DECLARATORY RELIEF [CCP §1060]

3 (On Behalf of Plaintiffs and All Others Similarly Situated)

4 (Against All Defendants)

5 96. Plaintiffs incorporate by reference and reallege each and every one of the
6 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
7 forth herein.

8 97. California Code of Civil Procedure §1060 provides that any person who desires a
9 declaration of his or her rights or duties with respect to another, in cases of actual controversy
10 relating to the legal rights and duties of the respective parties, may ask the Court for a declaration of
11 rights or duties, and the Court may make a binding declaration of these rights or duties, whether or
12 not further relief is or could be claimed at the time; any such declaration by the Court shall have the
13 force of a final judgment.

14 98. Defendants continue to this day to engage in some or all of the unlawful and
15 unfair conduct as described herein.

16 99. An actual controversy exists in that Defendant asserts that has the legal right to
17 perform the acts as described herein.

18 100. Plaintiffs desire a declaration as to the rights of Plaintiffs and all others similarly
19 situated with respect to Defendants' unlawful and unfair conduct, as described herein.

20 101. It is therefore necessary that the Court declare the rights and duties of the parties
21 hereto.

22 VI.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiffs pray:

25 a. That the Court issue an Order certifying the Classes herein, appointing the named
26 Plaintiff(s) as representative of all others similarly situated, and appointing the law firm(s)
27 representing the named Plaintiff(s) as counsel for the members of the Classes;

28 ///

As to the First Cause of Action for Unfair Business Practices:

b. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

c. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, and home telephone number;

d. For an Order requiring Defendants to make full restitution and payment pursuant to California law;

e. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

f. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

g. For all other appropriate injunctive, declaratory and equitable relief;

h. For interest to the extent permitted by law;

i. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194 and/or any other applicable provision of law;

As to the Second Cause of Action for Declaratory Relief:

j. A Declaration from the Court determining the rights of Plaintiffs and all others similarly situated regarding Defendants' unlawful and unfair conduct as described herein;

k. Such further Declaration of rights as the Court may deem proper; and

l. Payment of costs and attorneys' fees from the amount recovered for the common benefit of Plaintiffs and all others similarly situated.

As to All Causes of Action:

m. For such other and further relief as this Court may deem just and proper; and

n. For reasonable attorneys' fees and costs incurred.

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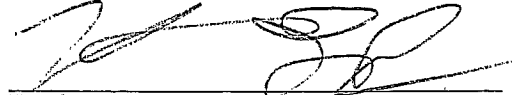
VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: December 20, 2007

LAW OFFICES OF KEVIN T. BARNES



Kevin T. Barnes, Esq.
Gregg Lander, Esq.
Attorneys for Plaintiffs

COPY B, -4X

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address) Kevin T. Barnes Kevin T. Barnes (SB# 138477) Law Offices of Kevin T. Barnes 5670 Wilshire Blvd., Ste. 1460 Los Angeles, CA 90036 TELEPHONE NO: (323) 549-9100 FAX NO.: (323) 549-0101 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court DEC 28 2007 John A. Clarke, Executive Officer/Clerk BY MARY GARCIA, Deputy CASE NUMBER: BC383006 JUDGE: DEPT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central District		
CASE NAME: JIMENEZ V. SEARS, ROEBUCK AND CO.		

CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): TWO

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 26, 2007

Kevin T. Barnes

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
 NOTICE OF CASE ASSIGNMENT – UNLIMITED CIVIL CASE
 CASE NUMBER _____

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

BC383006

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3 (c)). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William Highberger	32	406
Hon. Yvette M. Palazuelos	28	318	Hon. Ernest Hiroshige	54	512
Hon. Conrad Aragon	49	509	Hon. Jane Johnson	56	514
Hon. Helen I. Bendix	18	308	Hon. Elizabeth Allen White	48	506
Hon. Elihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515
Hon. Tricia Ann Bigelow	23	315	Hon. Ruth Ann Kwan	72	731
Hon. Soussan Bruguera	71	729	Hon. Rita Miller	16	306
Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632
Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507
Hon. Victoria Chaney	324	CCW	Hon. Mary Ann Murphy	25	317
Hon. Judith C. Chirlin	19	311	Hon. Joanne O'Donnell	37	413
Hon. Ralph W. Dau	57	517	Hon. Michael C. Solner	39	415
Hon. Maureen Duffy-Lewis	38	412	Hon. Mel Recana	45	529
Hon. James R. Dunn	26	316	Hon. Andria K. Richey	31	407
Hon. Mark Mooney	68	617	Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730	Hon. Ann I. Jones	40	414
Hon. Irving Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600
Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	313
Hon. Richard Fruin	15	307	Hon. Rolf M. Treu	58	516
Hon. Terry Green	14	300	Hon. John Shepard Wiley Jr.	50	508
Hon. Elizabeth A. Grimes	30	400	Hon. Charles C. Lee	33	409
Hon. Paul Gutman	34	408			
Hon. Robert L. Hess	24	314			
			OTHER		

*Class Actions

Given to Plaintiff/Cross-Complainant/Attorney of record on _____

John A. Clarke, Executive Officer/Clerk

_____, Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter 7 Rules as applicable in the Central District are summarized for your assistance.

APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days prior to the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days prior to this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter 7 Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

*Class Actions

All class actions are initially assigned to Judge Victoria Chaney in Department 324 of the Central Civil West courthouse (600 S. Commonwealth St., Los Angeles 90005). This assignment is for pretrial purposes and for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

BY FAX

SHORT TITLE:
JIMENEZ V. SEARS, ROEBUCK AND CO.

CASE NUMBER

BC 383006

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 5 ☐ HOURS ☒ DAYS.

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4. 1., 2., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Non-Personal Injury/Property	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Intellectual Property (19)	<input type="checkbox"/> A6016 Intellectual Property	2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: JIMENEZ V. SEARS, ROEBUCK AND CO.	CASE NUMBER
---	-------------

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (13)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property(not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

CIV 109 03-04 (Rev. 03/06)
LASC ApprovedCIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATIONLASC, rule 2.0
Page 2 of 4

EX. 3

36

SHORT TITLE TIMENK V. SEARS, ROEBUCK AND CO.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (29)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

CI / 109 03-04 (Rev. 03/06)
LASC Approved

**CIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATION**

LASC, rule 2.0
Page 3 of 4

SHORT TITLE: JIMENEZ V. SEARS, ROEBUCK AND CO.	CASE NUMBER
---	-------------

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 818 West Seventh Street	
<input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Los Angeles	STATE: CA	ZIP CODE: 90017	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: December 26, 2007

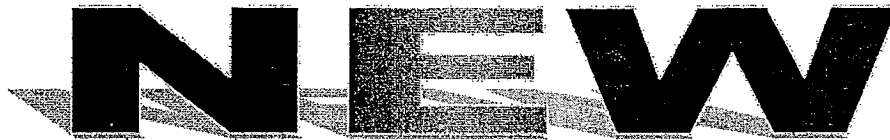


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 03-04 (Rev. 03/06).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

EXHIBIT 4



from the
LOS ANGELES SUPERIOR COURT
ADR DEPARTMENT

If you have a general jurisdiction case involving one of these 6 subject matter areas:

- commercial
- employment
- medical malpractice
- real estate
- trade secrets
- unfair competition

***Your case may be eligible for the court's pilot
Early Neutral Evaluation (ENE) program.***

- ◆ **ENE can reduce litigation time and costs and promote settlement.**
- ◆ ENE is an informal process that offers a non-binding evaluation by an experienced neutral lawyer with expertise in the subject matter of the case. After counsel present their claims and defenses, the neutral evaluates the case based on the law and the evidence.
- ◆ **ENE is voluntary and confidential.**
- ◆ The benefits of ENE include helping to clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions and, if requested by the parties, assist in settlement.
- ◆ **The first three (3) hours of the ENE session are free of charge.**

See back for a list of participating pilot courthouses and departments.

For additional ENE information, visit the Court's web site at www.lasuperiorcourt.org/adr

PARTICIPATING PILOT COURTHOUSES:

(General Jurisdiction Case Only)

- **Chatsworth**
- **Pomona**
- **Santa Monica**
- **Van Nuys**
- **Stanley Mosk** (Departments listed below only.)

Department 15

Department 16

Department 28

Department 30

Department 31

Department 32

Department 38

Department 42

Department 47

Department 50

Department 52

Department 55

Department 56

Department 68

Department 71

Department 89

**LOS ANGELES SUPERIOR COURT
CIVIL ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS**
[CRC 3.221 Information about Alternative Dispute Resolution]

The plaintiff shall serve a copy of the ADR Information package on each defendant along with the complaint.

ADR PROGRAMS

"Alternative Dispute Resolution (ADR)" is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes such as arbitration, mediation, early neutral evaluation (ENE), and settlement conferences, are less formal than court and provide opportunities for litigants to reach an agreement using a problem-solving approach rather than the more adversarial approach of litigation.

MEDIATION A neutral third party called a "mediator" helps participants in the dispute create their own resolution. The mediator helps facilitate a discussion in which the parties reach a mutually agreed upon settlement. Therefore, mediation allows for more creative resolutions to disputes than other ADR processes.

The Court Mediation Program is governed by Code of Civil Procedure sections 1775-1775.15, California Rules of Court, Rules 3.850-3.868 and 3.870-3.878; Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, Chapter 12.

ARBITRATION A neutral third party called an "arbitrator" listens to each side in the dispute present its case. The arbitrator, who is an attorney, issues a decision based on the evidence. Although evidence is presented, arbitration is a less formal process than litigation. The decision is non-binding unless the parties agree in writing to binding arbitration.

The Court Arbitration Program is governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, Rules 3.810-3.830, and Los Angeles Superior Court Rules, Chapter 12.

ENE A neutral third party called an "evaluator" will provide the parties and their counsel, on a voluntary basis and in a confidential session, the opportunity to make summary presentations of their claims and defenses, including key evidence. After hearing the presentations, the evaluator, who is an experienced lawyer with subject-matter expertise, offers a non-binding evaluation.

The evaluator will also help clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions, and, if requested by parties, settlement assistance. Although settlement is not the primary goal of ENE, the ENE process can reduce litigation time and costs and promote settlement.

The Court ENE Program is governed by Los Angeles Superior Court Rules, Chapter 12.

SETTLEMENT CONFERENCE A neutral third party called a "settlement officer," who is also a retired judge, assists the parties in negotiating their own settlement and may evaluate the strengths and weaknesses of the case.

JURISDICTIONAL LIMITATIONS

MEDIATION, ARBITRATION & ENE Any case in which the amount in dispute is between \$25,000-\$50,000 per plaintiff, and was not previously referred to the Court ADR Program, can be sent to the Court ADR Program for mediation, arbitration, or ENE by stipulation, election by plaintiff or order of the court.

Parties may *voluntarily* request or initiate a mediation or arbitration proceeding, regardless of the amount in dispute.

SETTLEMENT CONFERENCE Any case, regardless of the amount in dispute, may be ordered to a settlement conference. There is no monetary limit.

REFERRAL INFORMATION

After the Court determines the suitability of a case for ADR, the Court directs the parties to the ADR Department to initiate the ADR process. Once the parties have completed the ADR intake forms, a Neutral may be selected.

NEUTRAL SELECTION

Parties may select a mediator or arbitrator from the Court Party Pay Panel or Pro Bono Panel or may hire someone privately, at their discretion. Parties are assigned to a settlement officer by court staff.

COURT ADR PANELS

PARTY PAY PANEL	The Party Pay Panel consists of mediators and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.
PRO BONO PANEL	The Pro Bono Panel consists of trained mediators and arbitrators who have not yet gained the experience to qualify for the Party Pay Panel and experienced mediators and arbitrators who make themselves available pro bono. Mediators and arbitrators donate their time to the courts as a way of supporting the judicial system. It is the policy of the Court that all pro bono volunteer mediators and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.
ENE	The Court ENE Panel consists of experienced lawyers who have been trained to serve as neutral evaluators. The evaluators provide preparation time and three hours hearing time per case at no charge. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the evaluator if the parties consent in writing.
PRIVATE NEUTRAL	The market rate for private neutrals can range from \$200-\$1,000 per hour.

For additional information, visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

Partially Funded by the Los Angeles County Dispute Resolution Program

**LOS ANGELES COUNTY
DISPUTE RESOLUTION PROGRAMS ACT (DRPA) CONTRACTORS**

The following organizations provide mediation services under contract with the Los Angeles County Department of Community & Senior Services. Services are provided to parties in any civil case filed in the Los Angeles County Superior Court. Services are not provided under this program to family, probate, traffic, criminal, appellate, mental health, unlawful detainer/eviction or juvenile court cases.

Asian-Pacific American Dispute Resolution Center
(213) 250-8190
(Spanish & Asian languages capability)

California Academy of Mediation Professionals
(818) 377-7250

Center for Conflict Resolution
(818) 380-1840

Inland Valleys Justice Center
(909) 397-5780
(Spanish language capability)

Office of the Los Angeles City Attorney Dispute Resolution Program
(213) 485-8324
(Spanish language capability)

Los Angeles County Bar Association Dispute Resolution Services
toll free number 1-877-4Resolve (737-6583) or (213) 896-6533
(Spanish language capability)

Los Angeles County Department of Consumer Affairs
(213) 974-0825
(Spanish language capability)

The Loyola Law School Center for Conflict Resolution
(213) 736-1145
(Spanish language capability)

Martin Luther King Legacy Association Dispute Resolution Center
(323) 290-4132
(Spanish language capability)

City of Norwalk
(562) 929-5603

DRPA Contractors do not provide legal advice or assistance, including help with responding to summonses. Accessing these services does not negate any responsibility you have to respond to a summons or appear at any set court date. See the reverse side of this sheet for information on the mediation process and obtaining legal advice.

THIS IS A TWO-SIDED DOCUMENT.

<p>What is the goal of mediation?</p> <p>The goal is to assist the parties in reaching a mutually acceptable agreement or understanding on some or all of the issues. The parties jointly become the primary decision maker in how to resolve the issues as opposed to the traditional judge and/or jury system.</p>	
<p>Do I need an attorney for this?</p> <p>While it is recommended to have an attorney and/or receive legal advice before the mediation starts, you are not required to have representation. If you do have an attorney, they may participate in the mediation with you.</p>	
<p>How long does it take?</p> <p>Face-to-face mediations generally last one to three hours. Telephone conciliations, in which the parties do not meet face to face, vary from a few days to several weeks. Much depends on the number of parties involved and the complexities of the issues. When the mediation takes place depends on parties scheduling availability.</p>	
<p>A Mediator helps parties. . .</p> <ul style="list-style-type: none"> ◆ Have productive discussions ◆ Avoid or break impasses ◆ Defuse controversy ◆ Generate options that have potential for mutual gain ◆ Better understand each other's concerns and goals ◆ Focus on their interests rather than their positions 	<p>A Mediator does not...</p> <ul style="list-style-type: none"> ◆ Provide advice or opinions ◆ Offer legal information ◆ Make decisions for parties ◆ Represent or advocate for either side ◆ Judge or evaluate anyone or anything ◆ Conduct research ◆ "Take Sides"
<p>What does it cost?</p> <p>The first three hours of any mediation are free. Thereafter, charges are based on income or revenue. All fees are waived for low-income individuals.</p>	<p>Legal Advice/Information</p> <p>If you want to retain an attorney, a list of state certified referral services is at courtinfo.ca.gov which also has an on-line self help legal center.</p> <p>Self-Help Legal Access Centers are at the Inglewood, Palmdale, Pomona, and Van Nuys courthouses. nls-la.org and lafla.org</p> <p>Court Personnel can answer non-legal questions (forms, fees, fee waivers). lasuperiorcourt.org</p> <p>Low-income individuals may qualify for help from non-profit legal organizations. Court Personnel and DRPA contractors have such listings.</p>
<p>What is the difference between the contractors listed and the Superior Court ADR Office?</p> <p>The services offered by the contractors listed may be accessed immediately. Those offered by the Superior Court ADR Office, also a DRPA contractor, may not be accessed by parties until a court appearance, or at the directive of the judge assigned to the case.</p>	
<p align="center">Dispute Resolution Programs Act (DRPA) Grants Administration Office (213) 738-2621 (The DRP Office is not a Superior Court Office. Consult your phone directory to locate the number of the Court Office on your summons.)</p>	

THIS IS A TWO-SIDED DOCUMENT.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)			CASE NUMBER:

The undersigned parties stipulate to participate in an Alternative Dispute Resolution (ADR) process in the above-entitled action, as follows:

- ☐ Mediation
☐ Non-Binding Arbitration
☐ Binding Arbitration
☐ Early Neutral Evaluation
☐ Settlement Conference
☐ Other ADR Process (describe): _____

Dated: _____

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Additional signature(s) on reverse

Short Title	Case Number
-------------	-------------

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

EXHIBIT 5

Kevin T. Barnes, Esq. (#138477)
 Gregg Lander, Esq. (#194018)
 LAW OFFICES OF KEVIN T. BARNES
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, CA 90036-5627
 Tel.: (323) 549-9100 / Fax: (323) 549-0101
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)
 Janelle Carney, Esq. (#201570)
 LAW OFFICE OF JOSEPH ANTONELLI
 1000 Lakes Drive, Suite 450
 West Covina, CA 91790-2918
 Tel.: (626) 917-6228 / Fax: (626) 917-7686
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED

JOSE JIMENEZ, on behalf of himself and all
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New
 York corporation; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: BC383006

Dept.: 324

Honorable: Mel Red Recana

CLASS ACTION

NOTICE OF MINUTE ORDER

Action Filed: December 28, 2007

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the above entitled case has been deemed non-complex and
 reassigned to the Honorable Mel Red Recana in Dept.45 of the Los Angeles Superior Court,
 Stanley Mosk Courthouse. A true copy of said order is attached hereto as Exhibit 1.

Dated: January 9, 2008

LAW OFFICES OF KEVIN T. BARNES

By: 

Kevin T. Barnes, Esq.
 Gregg Lander, Esq.
 Attorneys for Plaintiffs

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/02/08

DEPT. 324

HONORABLE VICTORIA CHANEY

JUDGE

L. HIRONAKA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BC383006

Plaintiff

Counsel

NO APPEARANCES

JOSEJIMENEZ

VS

Defendant

SEARS ROEBUCK AND CO

Counsel

NON-COMPLEX (01-02-08)

ON CALENDAR

NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 01-03-08 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 01-03-08

John A. Clarke, Executive Officer/Clerk

By: KIN HILAIRE
KIN HILAIRE

LAW OFFICES OF KEVIN T. BARNES

Kevin T. Barnes, Esq.

5670 Wilshire Boulevard, Suite 1460

Los Angeles, California 90036-5627

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/02/08

DEPT. 324

HONORABLE VICTORIA CHANEY

JUDGE

L. HIRONAKA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am BC383006

Plaintiff

Counsel

NO APPEARANCES

JOSEJIMENEZ

VS

Defendant

SEARS ROEBUCK AND CO

Counsel

NON-COMPLEX (01-02-08)

NATURE OF PROCEEDINGS:

COURT ORDER

This Court makes its determination whether or not this case should be deemed complex pursuant to Rule 3.400 of the California Rules of Court.

This case is designated non-complex and is reassigned to Judge Mel Red Recana in Department 45 at Stanley Mosk Courthouse for all further proceedings.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 45 within five (5) days of service.

Any party objecting to the non-complex designation must file an objection and proof of service in Department 324 within ten (10) days of service of this minute order. Any response to the objection must be filed in Department 324 within seven (7) days of service of the objection. This Court will make its ruling on the submitted pleadings.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

Page 1 of 2 DEPT. 324

MINUTES ENTERED
01/02/08
COUNTY CLERK

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

NOTICE OF MINUTE ORDER

on the interested parties in this action, addressed as follows:

CT CORPORATION SYSTEM
818 West Seventh Street
Los Angeles, CA 90017

Joseph Antonelli, Esq. (#137039)
Janelle Carney, Esq. (#201570)
LAW OFFICE OF JOSEPH ANTONELLI
1000 Lakes Drive, Suite 450
West Covina, CA 91790-2918
Tel.: (626) 917-6228 / Fax: (626) 917-7686
Email: JAntonelli@antonellilaw.com

using the following service method(s):

X **VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on January 9, 2008, at Los Angeles, California.

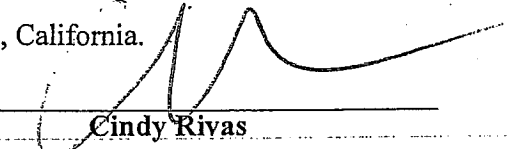

Cindy Rivas

EXHIBIT 6

Kevin T. Barnes, Esq. (#138477)
 Gregg Lander, Esq. (#194018)
 LAW OFFICES OF KEVIN T. BARNES
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, CA 90036-5627
 Tel.: (323) 549-9100 / Fax: (323) 549-0101
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)
 Janelle Carney, Esq. (#201570)
 LAW OFFICE OF JOSEPH ANTONELLI
 1000 Lakes Drive, Suite 450
 West Covina, CA 91790-2918
 Tel.: (626) 917-6228 / Fax: (626) 917-7686
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED

JOSE JIMENEZ, on behalf of himself and all
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New
 York corporation; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: BC383006
 Dept.: 324
 Honorable: Mel Red Recana

CLASS ACTION

**PROOF OF SERVICE OF SUMMONS
 & COMPLAINT**

Action Filed: December 28, 2007

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin T. Barnes Kevin T. Barnes (SB# 138477) Law Offices of Kevin T. Barnes 5670 Wilshire Blvd., Ste. 1460 Los Angeles, CA 90036 TELEPHONE NO.: (323) 549-9100 FAX NO. (Optional): (323) 549-0101 E-MAIL ADDRESS (Optional): barnes@kbarnes.com ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central District	
PLAINTIFF/PETITIONER: JOSE JIMENEZ, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED DEFENDANT/RESPONDENT: SEARS, ROEBUCK AND CO., A NEW YORK CORPORATION	CASE NUMBER: BC383006
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☐ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): NOTICE OF CASE ASSIGNMENT, CIVIL CASE COVER SHEET, ADDENDUM.
3. a. Party served (specify name of party as shown on documents served): SEARS, ROEBUCK AND CO.
 - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a): BJORN FLOR, CLERK @C.T. CORPORATION, REGISTERED AGENTS FOR SERVICE OF PROCESS.
4. Address where the party was served: 818 W. SEVENTH STREET, STE#200, LOS ANGELES, CA 90017.
5. I served the party (check proper box)
 - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12-28-2007 (2) at (time): 1:40 PM
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: JOSE JIMENEZ, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED	CASE NUMBER: BC383006
DEFENDANT/RESPONDENT: SEARS, ROEBUCK AND CO., A NEW YORK CORP	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify): SEARS, ROEBUCK AND CO.

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: LUIS J. VELIS/SCORPION ATTORNEY SERVICES
- b. Address: 15438 WOOD DUCK STREET, FONTANA, CA 92336.
- c. Telephone number: 213-276-0484
- d. The fee for service was: \$ 0.00
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:

(i) ☒ owner ☐ employee ☐ independent contractor.

(ii) Registration No.: 746

(iii) County: SAN BERNARDINO

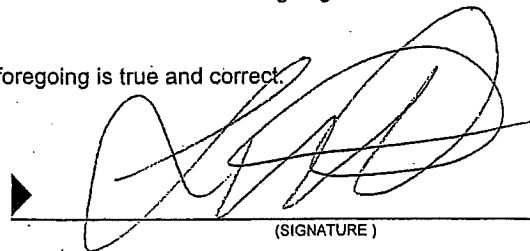
8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 1-8-2008

LUIS J. VELIS, REG# 746

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

PROOF OF SERVICE OF SUMMONS & COMPLAINT

on the interested parties in this action, addressed as follows:

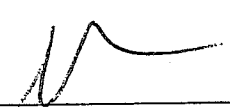
Bjorn Flor, Clerk
CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

using the following service method(s):

X VIA MAIL: I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2008, at Los Angeles, California.



Cindy Rivas

EXHIBIT 7

Kevin T. Barnes, Esq. (#138477)
 Gregg Lander, Esq. (#194018)
 LAW OFFICES OF KEVIN T. BARNES
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, CA 90036-5627
 Tel.: (323) 549-9100 / Fax: (323) 549-0101
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)
 Janelle Carney, Esq. (#201570)
 LAW OFFICE OF JOSEPH ANTONELLI
 1000 Lakes Drive, Suite 450
 West Covina, CA 91790-2918
 Tel.: (626) 917-6228 / Fax: (626) 917-7686
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED

JOSE JIMENEZ, on behalf of himself and all
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New
 York corporation; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: BC383006
 Dept.: 45
 Honorable: Mel Red Recana

CLASS ACTION

**NOTICE OF CASE MANAGEMENT
 CONFERENCE**

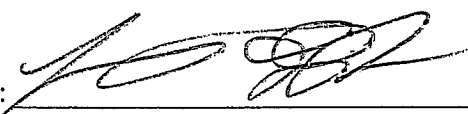
Action Filed: December 28, 2007

PLEASE BE ADVISED that the Court has set a Case Management Conference for April
 25, 2008 at 8:30 a.m. in Dept. 45. Pursuant to CRC 212 a completed Case Management
 Statement must be filed at least 15 calendar days prior to the Case Management Conference.

Attached as Exhibit 1 is a copy of the Notice of Case Management Conference.

Date: January 25, 2008

LAW OFFICES OF KEVIN T. BARNES

By: 
 KEVIN T. BARNES
 Attorneys for Plaintiffs

KEVIN T. BARNES
 5670 WILSHIRE
 BLVD., SUITE 1460
 LOS ANGELES, CA
 90036-5614
 TEL.: (323) 549-9100
 FAX: (323) 549-0101

NOTICE SENT TO:

Barnes, Kevin T., Esq
 Barnes, Kevin T., Law Offices of
 5670 Wilshire Boulevard, Suite 1460
 Los Angeles, CA 90036-5627

ORIGINAL FILED

JAN 18 2008

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JOSEJIMENEZ

Plaintiff(s),

VS.

SEARS ROEBUCK AND CO

Defendant(s).

CASE NUMBER

BC383006

NOTICE OF CASE
MANAGEMENT CONFERENCE

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

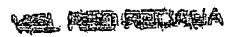
You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for April 25, 2008 at 8:30 am in Dept. 45 at
 111 N. Hill Street, Los Angeles, California 90012.

Pursuant to California Rules of Court, 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order dismissing fictitious/unnamed defendants; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (GC 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, CCP Sections 177.5, 575.2, 583.150, 583.360 and 583.410, GC Section 68608 (b), and California Rules of Court 2.2 et seq.

Date: January 18, 2008

 Judicial Officer

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

[] by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

[] by personally giving the party notice upon filing the complaint.

Date: January 18, 2008

John A. Clarke, Executive Officer/Clerk

by , Deputy Clerk

LACIV 132 (Rev. 01/07)
 LASC Approved 10-03

Cal. Rules of Court, rule 3.720-3.730
 LASC Local Rules, Chapter Seven

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

• **NOTICE OF CASE MANAGEMENT CONFERENCE**

on the interested parties in this action, addressed as follows:

Hwannie Lee Shen, Esq.
WINSTON & STRAWN LLP
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071
Tel.: (213) 615-1700 / Fax: (213) 615-1750
Email: HShen@winston.com

Joseph Antonelli, Esq.
Janelle Carney, Esq.
LAW OFFICE OF JOSEPH ANTONELLI
1000 Lakes Drive, Suite 450
West Covina, CA 91790-2918
Tel.: (626) 917-6228 / Fax: (626) 917-7686
Email: JAntonelli@antonellilaw.com

using the following service method(s):

X **VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on January 25, 2008, at Los Angeles, California.

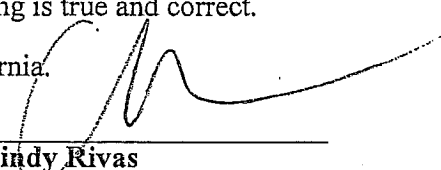

Cindy Rivas

EXHIBIT 8

COPY

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 11 2008

John A. Clarke, Executive Officer/Clerk
By Jalon Taylor, Deputy

JESSIE A. KOHLER (SBN 179363)
JULIA LAPIS BLAKESLEE (SBN 199365)
HWANNIE L. SHEN (SBN 222342)
AUDREY SHEN CHUI (SBN 254510)
WINSTON & STRAWN LLP
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: 213-615-1700
Facsimile: 213-615-1750

Attorneys for Defendant
SEARS, ROEBUCK AND CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

JOSE JIMENEZ, on behalf of himself and all
others similarly situated,

Plaintiffs,

vs.

SEARS, ROEBUCK AND CO., a New York
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. BC 383006
Assigned to the Honorable Mel Red Recana

1) NOTICE OF DEMURRER TO FIRST
AMENDED COMPLAINT;

2) DEMURRER; AND

3) MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

[Filed Concurrently With Motion to Strike]

Date: May 5, 2008
Time: 8:30 a.m.
Dept. 45

DEMURRER

LA:204914.1

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

1 TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 5, 2008, at 8:30 a.m., or as soon thereafter as counsel
3 can be heard, in Department 45 of the Los Angeles Superior Court, located at 111 North Hill Street,
4 Los Angeles, California, Defendant Sears, Roebuck and Co. will, and hereby does, demur to the
5 entire Complaint and each cause of action alleged therein.

6 The general demurrer is brought pursuant to Section 430.10, subsection (e), of the Code of
7 Civil Procedure, on the grounds that the First and Second Causes of Action each fail to state facts
8 sufficient to constitute a cause of action.

9 The general demurrer is based on the Complaint, this notice, the attached demurrer and
10 memorandum of points and authorities, on matters of which this Court may judicially notice, and on
11 the records on file with the Court, and on further evidence as may be presented at the hearing on this
12 matter.

13 Dated: February 11, 2008

WINSTON & STRAWN LLP
JESSIE A. KOHLER
JULIA LAPIS BLAKESLEE

14 By: 

15 Julia Lapis Blakeslee
16 Attorneys for Defendant
17 SEARS, ROEBUCK AND CO.
18
19
20
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28

DEMURRER

1

2

3 1. General Demurrer To The First Cause of Action for Violation of Business & Professions
 4 Code Sections 17200 et seq.

5 Plaintiff cannot proceed on his claim for violation of the Unfair Competition Law, Business
 6 & Professions Code Sections 17200 et seq., because his claim is predicated entirely on statutory
 7 violations which are barred by the statute of limitations in Code of Civil Procedure Section 338, and
 8 Plaintiff cannot use the Unfair Competition Law to plead around barred claims. In re Vaccine Cases,
 9 134 Cal. App. 4th 438 (2005).

10 [Code of Civil Procedure § 430.10(e).]

11

12 2. General Demurrer To The Second Cause of Action for Declaratory Relief Under Code Of
 13 Civil Procedure Section 1060.

14 Plaintiff cannot proceed on his claim for declaratory relief under Code of Civil Procedure
 15 Section 1060 because he lacks standing as a former employee of Defendant Sears, Roebuck and Co.
 16 ("Sears") to seek declaratory relief on behalf of Sears' current employees. Carsten v. Psychology
 17 Examining Comm. of Bd. of Med. Qual. Assur., 27 Cal. 3d 793, 796 (1980). He has also failed to
 18 allege a claim under Code of Civil Procedure section 1060. Sherwyn v. Dep't of Social Services,
 19 173 Cal. App. 3d 52, 58 (1985).

20 [Code of Civil Procedure § 430.10(e).]

21

22 Dated: February 11, 2008

23 WINSTON & STRAWN LLP
 24 JESSIE A. KOHLER
 25 JULIA LAPIS BLAKESLEE

26 By: 

27 Julia Lapis Blakeslee
 28 Attorneys for Defendant
 SEARS, ROEBUCK AND CO.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose Jimenez has brought this wage and hour lawsuit against Defendant Sears, Roebuck and Co. ("Sears") too late. He has not been employed by Sears for almost four years, and he has no present interest in Sears' wage and hour policies or practices. Consequently, there is no justiciable controversy at issue here.

Plaintiff's First Cause of Action under the Unfair Competition Law, Business & Professions Code Sections 17200 *et seq.* ("UCL"), which is predicated entirely on alleged statutory violations, is barred because the statute of limitations on the underlying claims has expired. Plaintiff cannot use Section 17200 to avoid a statutory bar to his claims. Nor can he maintain a claim under the "unfairness" prong of Section 17200 because he did not allege any conduct by Sears that was unfair, separate and apart from his legally-barred claim of unlawful conduct.

Moreover, Plaintiff may not pursue a claim for declaratory relief on behalf of current Sears employees because he is not employed by Sears. He therefore lacks standing to seek declaratory relief and has otherwise failed to set forth the requisite elements of a declaratory relief claim.

Plaintiff's First and Second Causes of Action fail to state a claim, and the admissions that Plaintiff makes in the Complaint make clear that he cannot possibly plead additional facts that would make his claims immune to demurrer. The Court should sustain Sears' demurrer without leave to amend.

II. PLAINTIFF'S ALLEGATIONS

Plaintiff was first employed by Sears as an Assistant Manager in November 2000, at the Torrance, California store. (Complaint, ¶ 9.) He held his position for two and a half years, until to May 16, 2003. (Complaint, ¶ 9.) He was re-hired as an Assistant Manager at the West Covina store a year later, in March 2004, and held this position for about a month, until April 9, 2004. (Complaint, ¶ 9.) Plaintiff last worked for Sears almost four years ago. (Complaint, ¶ 9.)

Plaintiff filed this putative class action complaint in Los Angeles Superior Court on December 28, 2007, over three-and-a-half years after he left his employment with Sears.

(Complaint, ¶ 4.) He seeks to represent current and former employees who held the title "Assistant Manager" in Sears' Automotive Center Division. (Complaint, ¶ 4.) His definition of the putative class also includes all persons who held positions "with substantially similar titles and duties in that division." (Complaint, ¶ 4.) He does not, however, identify any of these duties or titles, or describe how they are "substantially similar" to the Assistant Manager job title or duties. (Complaint, ¶ 4.)

The Complaint alleges that the putative class period begins on December 28, 2003, four years preceding the date that he filed the Complaint. (Complaint, ¶ 3.) Therefore, Plaintiff was a member of the putative class for only a month during the class period he proposes.

The Complaint attempts to state two causes of action. The First Cause of Action, for violation of the UCL, complains of unlawful, unfair and fraudulent business practices. (Complaint, ¶ 39.) Plaintiff identifies these practices as:

- (a) Misclassifying the putative class members as exempt from overtime pay requirements, and failing to pay them overtime, as required by to Labor Code Sections 204, 510(a) and 1194 (Complaint, ¶¶ 40-45);
- (b) Not providing rest breaks, as required by to Labor Code Sections 226.7(a) and 512, and Section 11(B) of the Industrial Welfare Commission ("IWC") Wage Orders (Complaint, ¶¶ 50-52, 54-55, 59);
- (c) Not providing meal breaks, as required by to Labor Code Sections 226.7(a) and 512, and Section 12(B) of the IWC Wage Orders (Complaint, ¶¶ 63-66, 68);
- (d) Failing to issue accurate, itemized wage statements, as required by to Labor Code Sections 226(a) and Section 7(A) of the IWC Wage Orders (Complaint, ¶¶ 72-77); and
- (e) Not paying the penalties required by Labor Code Section 203 for an alleged failure to pay all wages due upon termination of employment (Complaint, ¶¶ 81-84).

1 The First Cause of Action does not allege any unlawful, unfair or fraudulent business practices other
2 than the purported violations of the statutes set forth above.

3 The Second Cause of Action seeks declaratory relief pursuant to Code of Civil Procedure
4 Section 1060 for the same conduct that gives rise to Plaintiff's UCL claim. (Complaint, ¶¶ 96-101.)
5 Thus, the factual allegations underlying the Second Cause of Action are the same as those in the
6 First Cause of Action.

7 The Complaint seeks various remedies, including restitution, disgorgement, penalties,
8 injunctive relief, attorneys' fees, costs, interest and declaratory relief. (Complaint, prayer, ¶¶ d, e, g-
9 j, l, n.)

10 **III. PLAINTIFF'S FIRST CAUSE OF ACTION FOR UNFAIR COMPETITION IS**
11 **BARRED BECAUSE IT IS ENTIRELY DUPLICATIVE OF STATUTORY WAGE**
12 **CLAIMS ON WHICH THE STATUTE OF LIMITATIONS HAS EXPIRED**

13 **A. The First Cause Of Action Is Predicated Exclusively On Sears' Alleged Labor**
14 **Code Violations.**

15 The Complaint alleges that Plaintiff's UCL claim is based on the following acts by Sears:

16 • Overtime

17 "Defendants' pattern, practice and uniform administration of corporate
18 policy regarding illegal employee compensation as described herein is
19 unlawful and creates an entitlement, pursuant to Labor Code §218 and
20 Labor Code §1194(a), to recovery by the members of the Overtime
21 Subclass, in a civil action, for the unpaid balance of the full amount of
22 the straight time compensation and overtime premiums owing,
23 including interest thereon, reasonable attorneys' fees, and costs of
24 suit."

25 (Complaint, ¶ 45.)

26 • Meal periods

27 "Defendants failed to comply with the meal period requirements
28 established by Labor Code §226.7, Labor Code §512, Labor Code
§516 and Section 11(B) of the IWC Wage Order(s)."

(Complaint, ¶ 59.)

//

//

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

• Rest periods

"Defendants failed to authorize and permit the required rest periods established by Labor Code §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s).

(Complaint, ¶ 68.)

• Wage statements

"75. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and still do not furnish each of the members of the Wage Statement Subclass with an accurate itemized statement in writing showing (1) gross wages (2) total daily hours worked by the employee (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding, and the total hours worked per pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

76. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by the members of the Wage Statement Subclass, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay."

(Complaint, ¶¶ 75, 76.)

• Penalties for failure to pay wages upon termination of employment

"Defendants willfully failed to pay the members of the LC 203 Subclass a sum certain at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter."

(Complaint, ¶ 84.)

Thus, the only factual allegations supporting Plaintiff's UCL claim concern a violation of the Labor Code.¹

¹ California Business and Professions Code Section 17200 defines "unfair competition" as any "unlawful, unfair or fraudulent business practice." Proscribed "unlawful business activity" includes "anything that can properly be called a business practice and that at the same time is forbidden by law." Barquis v. Merchants Collection Assn., 7 Cal. 3d 94, 113 (1972). Essentially, "an action based on [§ 17200] to redress an unlawful business practice 'borrows' violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practices independently actionable under section 17200 et seq. and subject to the distinct remedies provided thereunder." Farmers Ins. Exchange v. Superior Court, 2 Cal. 4th 377, 383 (1992).

B. The Statutes On Which Plaintiff's First Cause Of Action Is Based Are Subject To Statute Of Limitations That Expired Before Plaintiff Filed His Complaint.

The Labor Code sections upon which Plaintiff relies in pleading his UCL claim are all subject to the limitations period set forth in Code of Civil Procedure Sections 203, 338(a) and 340(a), which read as follows:

Section 338(a) -- "An action upon a liability created by statute, other than a penalty or forfeiture" must be brought within three years.

Section 340(a) -- "An action upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation," must be brought within one year.

Section 203 -- "Suit may be filed for these penalties [for failure to pay wages due a terminated employee] at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise."

Therefore, Plaintiff's claims under Labor Code Sections 203, 204, 218, 226.7, 510, 512, 1194 and 1198 are subject to a three year statute of limitations.² His claim for penalties under Labor Code Section 226 is subject to a one year statute of limitations.³

² Plaintiff also alleges that Sears violated Labor Code Sections 218, and 516, however, these statutes do not provide any basis for an action by Plaintiff. Labor Code Section 218 states:

"Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article."

Labor Code Section 516 states:

"Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

³ As discussed in the accompanying motion to strike, Plaintiff may not seek penalties under Labor Code Sections 203 and 226 as part of his UCL claim because the UCL provides only for restitutionary relief and penalties are not available. Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone, 20 Cal. 4th 163, 179 (1999).

1 Since Plaintiff's last day of employment with Sears was April 9, 2004, his right to bring an
 2 action under Labor Code Section 226 expired on April 9, 2005, and his right to bring an action under
 3 Labor Code Sections 203, 204, 218, 226.7, 510, 512, 1194 and 1198 expired on April 9, 2007. Cal.
 4 Code Civ. Proc. §§ 338(a), 340(a). However, Plaintiff did not file the Complaint until December 28,
 5 2007 – almost nine months after the three year statute of limitations on the Labor Code violations
 6 expired. Thus, the alleged statutory violations underlying his UCL claim are barred by the statute of
 7 limitations.

8 **C. Plaintiff's UCL Claim Is Barred Because The Underlying Statutory Claims Are**
 9 **Barred.**

10 Since Plaintiff cannot maintain a cause of action against Sears under any set of facts for
 11 violation of the Labor Code, there is no basis for relief against Sears under the unfair competition
 12 law. In re Vaccine Cases, 134 Cal. App. 4th 438 (2005).

13 The plaintiffs in In re Vaccine Cases alleged that the defendant vaccine manufacturers
 14 violated the Safe Drinking Water and Toxic Enforcement Act of 1986 (the "Act") by failing to
 15 provide warnings required by the Act. Id. at 444. The plaintiffs in that case also included a claim
 16 under Section 17200. Id. at 445. The Court of Appeal upheld the trial court's ruling sustaining the
 17 defendants' demurrer on the ground that no statutory violation supported the unlawful act or practice
 18 upon which the plaintiffs' UCL claim was based because the plaintiff had failed to timely provide
 19 60-day notice of the lawsuit. Id.

20 The Court of Appeal in In re Vaccine Cases relied upon a California Supreme Court decision
 21 holding that "a plaintiff may not bring an action under the unfair competition law if some other
 22 provision bars it." Id. at 445 (citing Cel-Tech, supra, 20 Cal. 4th at 184). As the Court of Appeal
 23 observed, "Cel-Tech holds that where the Legislature has specifically precluded that no action
 24 should lie, the plaintiff cannot use the unfair competition law to "'plead around'" an "'absolute bar to
 25 relief.'" Id. at 458 (citing Cel-Tech, supra, at 182).

26 In re Vaccine Cases expressly rejected the proposition that the plaintiffs' claim in that case
 27 could be construed to seek redress for "unfair" practices because the complaint focused exclusively
 28 on an alleged statutory violation. Id. at 457. Thus, the court held that the same conduct which is

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1 alleged to be "unlawful" because it violates a statute may *not* also satisfy the alternative "unfair"
2 prong of Section 17200.

3 The "unfair" prong of Section 17200 may be satisfied only by separate allegations of
4 different conduct that is not also alleged to violate a statute. Such separate allegations of "unfair"
5 conduct are absent in the instant case. In fact, Plaintiff expressly alleges that the Sears' conduct was
6 "unfair" only because of his alleged statutory violations:

7 "Defendants have engaged in unfair business practices in California by
8 practicing, employing and utilizing the employment practices outlined
9 in the preceding paragraphs, specifically, by requiring employees to
10 perform the labor services complained of herein without the requisite
11 compensation. . . . [¶] Defendants' use of such practices constitutes an
12 unfair business practice, unfair competition and provides an unfair
13 advantage over Defendants' competitors."

14 (Complaint, ¶¶ 89, 90.)

15 Like the plaintiffs in In re Vaccine Cases, Plaintiff in this case predicates his UCL claim
16 solely on Sears' alleged statutory violations. (Complaint, ¶¶ 45, 59, 68, 75, 76, 84.) He avers that
17 Sears' conduct constituted "unfair business practices" in violation of Section 17200 because it
18 violated the Labor Code. Plaintiff does not allege that any other business practice, aside from the
19 alleged Labor Code violations, is "unfair."

20 Thus, even if the Court accepts all material allegations in Plaintiff's Complaint as true and
21 construes them in the light most favorable to Plaintiff, there is simply no allegation in the Complaint
22 that forms the basis for a UCL violation aside from Plaintiff's contention that Sears' actions violated
23 the Labor Code. Id. As the case in Cel-Tech, Plaintiff cannot evade the requirement imposed by the
24 statute of limitations by re-pleading his Labor Code claims as one for violation of the UCL.⁴ In re
25 Vaccine Cases, 134 Cal. App. 4th at 459.

26 ⁴ The decision in Cortez v. Purolator Air Filtration, 23 Cal. 4th 163 (2000), which confirmed that a
27 claim for back wages under the UCL is restitutionary in nature and may be subject to a four year
28 statute of limitations, did not consider the question of whether a UCL claim is barred when the
statute of limitations on the underlying statutory claims has expired. A decision is authority only
"for the points actually involved and actually decided." Santisas v. Goodin, 17 Cal. 4th 599, 620

Accordingly, he cannot maintain a cause of action for violation of Section 17200 against Sears. The Court should sustain Sears' demurrer as to the first cause of action, without leave to amend.

IV. PLAINTIFF HAS NOT, AND CANNOT, SET FORTH A CLAIM FOR DECLARATORY RELIEF

A. Plaintiff Lacks Standing To Sue For Declaratory Relief Over His Former Employer's Wage And Hour Practices, Which Have No Effect Upon Him.

Plaintiff, who has not been employed by Sears since early 2004, has no real interest in Sears' current wage and hour policies and practices, and lacks standing to seek declaratory relief on behalf of current Sears employees. His Second Cause of Action is therefore subject to demurrer for lack of standing, as it is clear from the face of the Complaint that he is not in danger of suffering any continuing or future injury as a result of Sears' alleged wage and hour policies or practices. Carsten v. Psychology Examining Comm. of Bd. of Med. Qual. Assur., 27 Cal. 3d 793, 796 (1980).

In order to bring a claim against Sears, Plaintiff must be a real party in interest with respect to that claim. Gantman v. United Pac. Ins. Co., 232 Cal. App. 3d 1560, 1566 (1991) (affirming summary judgment of claim for lack of standing to sue). As the person invoking judicial the process, Plaintiff must have a real interest in the ultimate adjudication of the claim at issue, and be about to suffer "an injury of sufficient magnitude." Blumhorst v. Jewish Family Services of Los Angeles, 126 Cal. App. 4th 993, 1001 (2005). See also Carsten, *supra* (plaintiff fails to state a cause of action where the claim sued upon belongs to somebody else).

Plaintiff is not, however, in danger of any present or future harm from Sears' wage and hour policies or practices. To the extent that he has a claim against Sears, it is only for what it allegedly did in the *past*, and not for Sears' current or future actions, which have no effect upon Plaintiff. The Court should therefore dismiss the Second Cause of Action.

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(1998). And since no party in Cortez raised that claim of error, the issue presented by this demurrer has not been ruled upon.

1 **B. Plaintiff Has Failed To Allege The Necessary Elements Of A Declaratory Relief**
 2 **Claim.**

3 An claim for declaratory relief must allege either a present or probable future controversy
 4 relating to the legal rights and duties of the parties. Sherwyn v. Dep't of Social Services, 173 Cal.
 5 App. 3d 52, 58 (1985). The Complaint here fails to plead these elements. It concedes that Plaintiff
 6 is a former employee of Sears. (Complaint, ¶ 9.) Plaintiff therefore does not, and cannot, plead the
 7 existence of a present or probable future controversy relating to his employment with Sears. Id. See
 8 also Deming v. Communist Party of United States, 64 Cal. App. 2d 35 (1944) (affirming trial court's
 9 decision to sustain demurrer without leave to amend for failure to plead actual justiciable
 10 controversy under Section 1060). See also Blumhorst, supra, at 1004 ("for standing to seek the
 11 prospective relief of an injunction, a plaintiff must show a likelihood he will be harmed in the future
 12 if the injunction is not granted") (citing Coral Construction, Inc. v. City & County of San Francisco,
 13 116 Cal. App. 4th 6, 17, 24 (2004)).

14 The Court should therefore sustain Sears' demurrer to Plaintiff's Second Cause of Action for
 15 declaratory relief under Code of Civil Procedure section 1060.

16 **V. CONCLUSION**

17 For the foregoing reasons, Sears respectfully requests that this Court sustain its demurrer
 18 without leave to amend.

19 Dated: February 11, 2008

WINSTON & STRAWN LLP
 JESSIE A. KOHLER
 JULIA LAPIS BLAKESLEE

21 By: 

22 Julia Lapis Blakeslee
 23 Attorneys for Defendant
 24 SEARS, ROEBUCK AND CO.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
 3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party
 5 to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue,
 Los Angeles, CA 90071-1543. On February 11, 2008, I served the within document(s):

- 6 1. NOTICE OF DEMURRER TO FIRST AMENDED COMPLAINT;
 7 2. DEMURRER
 8 3. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF



10 by placing the document(s) listed above in a sealed envelope with postage thereon
 fully prepaid, in the United States mail at Los Angeles, California, addressed as set
 forth below.

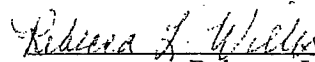
11 Kevin T. Barnes, Esq.
 12 Gregg Lander, Esq.
 Law Offices of Kevin T. Barnes
 5670 Wilshire Boulevard, Suite 1460
 13 Los Angeles, CA 90036-5627

14 Joseph Antonelli, Esq.
 15 Janelle Carney, Esq.
 Law Office of Joseph Antonelli
 1000 Lakes Drive, Suite 450
 16 West Covina, CA 91790

17 I am readily familiar with the firm's practice of collection and processing correspondence
 18 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 19 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than one day after the date of deposit for mailing an affidavit.

20 I declare under penalty of perjury under the laws of the State of California that the above
 21 is true and correct.

22 Executed on February 11, 2008, at Los Angeles, California.

23 

24 Rebecca L. Willis

25
 26
 27
 28
PROOF OF SERVICE